

01 that this court “dismiss all charges” and award him eight months of SSI compensation, which he
02 apparently has not received while he has been incarcerated. (*Id.* at 4).

03 While plaintiff’s complaint faces many potential obstacles, perhaps the most serious one
04 is the traditional immunity accorded judges.¹ “[T]he Supreme Court has determined that certain
05 government officials require *absolute immunity* from liability in order to enable them to function
06 independently and effectively, without fear of intimidation or harassment. Accordingly, the Court
07 has granted absolute immunity to the President, judges, prosecutors, witnesses, and officials
08 performing quasi-judicial functions, and legislators.” *Fry v. Melaragno*, 939 F.2d 832, 835-36 (9th
09 Cir. 1991), *quoting Mitchell v. Forsyth*, 472 U.S. 511, 520 (1985) (internal quotations omitted)
10 (emphasis added). Even if plaintiff were to allege that the judges in question had acted
11 “maliciously and corruptly,” such allegations would not be sufficient to strip away judicial
12 immunity, if the acts complained of were performed in a “judicial capacity.” *See Mireles v. Waco*,
13 502 U.S. 9, 11 (1991). Here, plaintiff has failed to show that the acts complained of were
14 performed in a non-judicial capacity; thus, he has failed to overcome the bar of judicial immunity.

15 Accordingly, plaintiff’s application for leave to proceed *in forma pauperis* should be
16 denied because the underlying complaint is barred by judicial immunity. A proposed Order
17 accompanies this Report and Recommendation.

18 DATED this 23rd day of May, 2005.

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21 Mary Alice Theiler
22 United States Magistrate Judge

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24 ¹ The other potential barriers to this lawsuit are the rule which bars § 1983 actions if
25 success would necessarily imply the invalidity of a prior criminal conviction, *see Heck v.*
26 *Humphrey*, 512 U.S. 477, 486-87 (1994) and the requirement that a prisoner exhaust his
administrative remedies before bringing an action pursuant to § 1983. *See Booth v. Churner*, 531
U.S. 956 (2001).